

UTAH ASSOCIATION  
OF COUNTIES  
INSURANCE MUTUAL

## MINUTES, BOARD OF DIRECTORS MEETING

May 16, 1994, 4:00 p.m.

### Members

#### Participating:

Gerald Hess, *Vice-President*, Davis County Deputy Attorney  
Dennis Ewing, *Comptroller*, Tooele County Clerk  
Max Adams, *Board Member*, Uintah County Commissioner  
Kenneth Brown, *Board Member*, Rich County Commissioner  
Ty Lewis, *Board Member*, San Juan County Commissioner  
Gary Sullivan, *Board Member*, Beaver County Commissioner

### Others

#### Participating:

Kent Sundberg, Utah County Deputy Attorney  
Gary McKean, Cache County Attorney  
Brent Gardner, UACIM Administrator  
Sonya White, UACIM Administrative Assistant  
Doug Alexander, AIMS Branch Manager

A telephonic meeting of the UACIM Board of Directors was called by the Vice-President and Vice-Chairman, Gerald Hess, to discuss urgent settlement authorization of claim number 801CAC927005.

A waiver was signed by the Board of Directors, waiving any and all notice requirements by Section 7.2 of the By-Laws of the UACIM due to the urgency of this authorization.

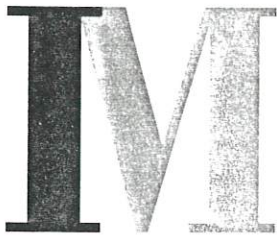
Kent Sundberg, chairman of the Litigation Management Committee and Gary McKean, Cache County Attorney, reviewed the basis of settlement with the Board and advised that the recommendation of the LMC was to settle this claim in the amount of \$145,000.

Dennis Ewing made a motion to heed the LMC recommendation to settle claim number 801CAC927005, up to an amount of \$145,000.

A conformation letter will be sent to Gary McKean based on the Board's decision.

Meeting was adjourned.





UTAH ASSOCIATION  
OF COUNTIES  
INSURANCE MUTUAL

May 16, 1994

Gary McKean  
Cache County Attorney  
110 North 100 West  
Logan, Utah 84321

RE: Claim Number: 801CAC927005  
Claimant: Leo R. Beus, et al  
Date of Loss: June 4, 1992

Dear Gary:

Pursuant to a meeting of the Utah Association of Counties Insurance Mutual Board of Directors on this date, a motion was made, seconded and passed authorizing settlement in the above captioned claim up to \$145,000.00.

You will find attached a signed waiver notice waiving any and all notice requirements by Section 7.2 of the By-Laws of the Utah Association of Counties Insurance Mutual due to the urgency of this authorization.

Respectfully,

Gerald E. Hess  
Vice-President, UACIM

Attachment

xc: ~~UACIM Board of Directors~~  
~~Brent Gardner, UACIM Administrator~~  
~~Doug Alexander, AIMS Branch Manager~~  
~~Harry Bowes, UACIM Consultant~~



# Cache County Attorney

Gary O. McKean  
County Attorney

110 North 100 West  
Logan, Utah 84321  
(801) 752-8920  
FAX (801) 753-7120

James C. Jenkins  
Deputy  
Jeffrey "R" Burbank  
Deputy  
Patrick B. Nolan  
Deputy

## MEMORANDUM

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To: UACIM Litigation Management Committee  
From: Gary O. McKean  
Date: January 10, 1993  
Subject: Coverage

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As part of the scheduled discussion on coverage issues for the meeting on January 12th, I suggest that the following be addressed:

### A. General

#### 1. Coverage

##### (a) Pre-UACIM.

Generally, I believe the counties assume or understand that everything covered by commercial insurance to the counties at the time the UACIM policies took effect continue to be covered. I believe this needs a clear statement of confirmation or qualification as the case may be.

##### (b) Current Coverage.

The proposal for UACIM included a list of claims in a comparison with the existing coverages of the counties. I suggest that the list be updated and circulated to the member counties so that they might have a better grasp of current coverage. In particular, if there are claims that are not covered which ought to be and which the counties believe are, the counties need to know so that such gaps can be filled.

#### 2. Inverse Condemnation.

Exclusion 15 under the excess liability policy (page 10) excludes but does not define "inverse condemnation". The distinction between inverse condemnation and "taking" needs to be noted and reviewed.



## B. Beus vs Cache County

### 1. Coverage

We are concerned about the intended retroactive effect of the policy statement adopted on November 11, 1992. This statement may have merit in general but applying it to our case retroactively is of real concern.

### 2. Inverse Condemnation

In addition to the issue of a correct definition of "inverse condemnation", in this case there is no inverse condemnation. The claims are based on matters of title derived from actual purchases and deeds rather than by governmental actions or regulations. The county has a property interest in the property. Therefore, there is a significant question of whether the exclusion is at all applicable.

### 3. Allocation of Costs

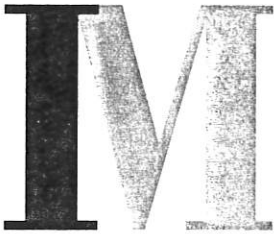
The issue of taking has not been addressed in the litigation at all as yet, other than in some settlement discussions. The case was bifurcated into a first phase and trial dealing with the quiet title claim and title defenses. The second phase of the case deals with claimed damages for trespass and may develop into a taking issue. The costs incurred thus far should not be counted under the policy statement for inverse condemnation. At the least, we need to discuss an appropriate allocation of costs between matters subject to the policy statement and those that are not.

In business or financial terms, it is understandable that the Mutual needs to be cautious with respect to its handling of claims and incurrence of costs. It is also understandable that the Mutual has not had adequate time to build its reserves and financial capabilities fully. Accordingly, decisions have to be made regarding coverages and cost-sharing. But those are business decisions and are not legal in nature.

The policy statement regarding eminent domain and inverse condemnation was basically a business-based decision and may very well be appropriate. However, it needs to be more clearly written and needs to take into account that any takings case will involve civil rights and probable claims of trespass or other tort. Legal defense will be needed and issues cannot always be easily divided for defense and therefore costs purposes.







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May 16, 1994

Gary McKean  
Cache County Attorney  
110 North 100 West  
Logan, Utah 84321

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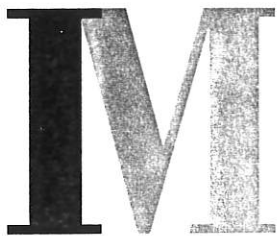
Respectfully,

Gerald E. Hess  
Vice-President, UACIM

Attachment

xc: UACIM Board of Directors  
Brent Gardner, UACIM Administrator  
Doug Alexander, AIMS Branch Manager  
Harry Bowes, UACIM Consultant






UTAH ASSOCIATION  
OF COUNTIES  
INSURANCE MUTUAL

## *MEMORANDUM*

**TO:** Douglas Alexander, Branch Manager  
**FROM:** Brent Gardner, UACIM Administrator  
**DATE:** May 31, 1994  
**SUBJECT:** Payment Authorized by Board for \$145,000

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As approved by the UAC Insurance Mutual Board of Directors on May 16, 1994, you are authorized to make a payment to Snow, Christensen & Martineau Trust Account in the amount of \$145,000, for the purposes of payment on claim #801CAC927005 for general liability settlement.



WAIVER OF NOTICE OF MEETING OF BOARD OF TRUSTEES OF THE UTAH  
ASSOCIATION OF COUNTIES INSURANCE MUTUAL

We, the undersigned Trustees of the Utah Association of Counties Insurance Mutual, do hereby waive any and all notice required by Section 7.2 of the By-Laws of said Utah Association of Counties Insurance Mutual, of a telephonic meeting to be held on the 16th day of May, 1994, at 4:00 p.m. The purpose of said meeting of the Board of Trustees of the Utah Association of Counties Insurance Mutual is to obtain the authorization of the Board of Trustees to settle claim number 801CAC927005, in the sum of One Hundred Forty-Five Thousand Dollars (\$145,000.00).

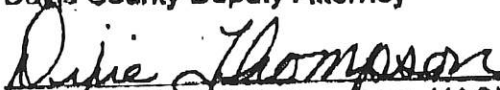
DATED this 16th day of May, 1994.



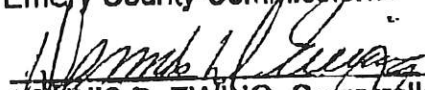
GARY R. HERBERT, President, UACIM  
Utah County Commissioner



GERALD E. HESS, Vice-President, UACIM  
Davis County Deputy Attorney



DIXIE THOMPSON, Secretary, UACIM  
Emery County Commissioner



DENNIS D. EWING, Comptroller, UACIM  
Tooele County Clerk



MAX D. ADAMS, Board Member, UACIM  
Utah County Commissioner





**WAIVER OF NOTICE OF MEETING OF BOARD OF TRUSTEES OF THE UTAH  
ASSOCIATION OF COUNTIES INSURANCE MUTUAL**

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DATED this 16th day of May, 1994.

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GARY R. HERBERT, President, UACIM  
Utah County Commissioner

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GERALD E. HESS, Vice-President, UACIM  
Davis County Deputy Attorney

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DIXIE THOMPSON, Secretary, UACIM  
Emery County Commissioner

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DENNIS D. EWING, Comptroller, UACIM  
Tooele County Clerk

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MAX D. ADAMS, Board Member, UACIM  
Uintah County Commissioner

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**Dial-In Reservation Confirmation**

TeleConference Service  
(800) 232-1111

Number of Pages : 2  
(including cover)

Date: 5-13-94

Arranger/Host: Sonya

Voice #: 801-265-1331

Fax #: 801-265-9485

Participant: \_\_\_\_\_

Fax #: \_\_\_\_\_

**TeleConference Details:**

Day/Date of Call: 5-16-94 Start Time: 4pm Time Zone: MD No. of Locations: 13

To reach your TeleConference dial 1-800-432-2188 and enter the following code:

Host Code	Provided at time of reservation to conference arranger. Omitted here for security purposes.
Participant Code	<u>439169</u>

240589

**Helpful Hints for a Successful Conference Call**

- Speakerphones can induce noise on your call. Please use only high quality speakerphone equipment and mute your microphone when not speaking.
- Key participants should sit next to the microphone or use a handset.
- Please do not put your line on hold. Your system may have music-on-hold which will disrupt the call.
- For assistance during your conference call, the host should dial #0 to reach the specialist.

**Participant Feedback:**

Your successful conference call is important to us. We appreciate your feedback. Please take a few moments to complete this form and fax to (800) 852-2956.

I. Was the process of dialing into your conference prompt, responsive, and easy?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, why not? \_\_\_\_\_

II. How would you rate the call transmission quality?

Low \_\_\_\_\_ Medium \_\_\_\_\_ High \_\_\_\_\_

III. On a scale of 1-10 (10 the highest) how would you rate your overall TeleConference? \_\_\_\_\_

*Thank You for using AT&T TeleConference Service*



# **IMPORTANT**

## **UTAH ASSOCIATION OF COUNTIES INSURANCE MUTUAL**

**4021 South 700 East, Suite 180  
Salt Lake City, UT 84107  
Telephone: (801) 265-1331  
FAX: (801) 265-9485**

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**DATE:** May 13, 1994 **FAX #:**

**TO:** All UACIM Board of Directors (see following list)

**FROM:** Brent Gardner

**SUBJECT:** Board authorization for claim settlement

**PAGES:** 1 **(INCLUDING COVER SHEET)**

**COMMENTS:** **URGENT!!!** Board authorization is needed on a claim settlement.

We have set up a conference call for Monday, May 16, 1994, at 4:00 p.m. to discuss  
this with myself, Doug Alexander, Kent Sundberg, Gary McKean and the Board of  
Directors. On Monday at 4:00 p.m. call 1-800-432-2188 and dial in the participant  
number 439169. This will connect you to our office on the conference call. If you have  
any questions, call Sonya at 265-1331. Please plan to participate for approximately 30  
minutes. Thank you.

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**PLEASE CALL US IMMEDIATELY IF THERE ARE PROBLEMS DURING THIS  
TRANSMISSION AT (801) 265-1331**



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**DATE:** May 13, 1994 **FAX #:**

**TO:** Kent Sundberg

**FROM:** Brent Gardner

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